IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2412 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

STATE OF GUJARAT

Appearance:

MR PS OZA for Petitioner

Mr. I.M.Pandya AGP for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/09/2000

ORAL JUDGEMENT

Learned advocate Mr. Oza is appearing for the petitioner. Mr. I.M. Pandya, learned AGP is appearing for the respondent authorities. This petition was admitted by this court on 9th August, 2000 and at that

time, notice as to interim relief was issued by this court. Today, when the matter was taken up for hearing on interim relief, it has been jointly suggested that the matter could be taken up for final hearing today itself. Hence, in the facts and circumstances of the case, the matter is taken up for final hearing today itself.

In this petition, the petitioner has challenged the order dated 18th January, 1999 passed by the Additional Special Secretary (Appeals) Revenue Department, Government of Gujarat. The petitioner has filed revision application before the respondent authority under sec. 211 of the Bombay Land Revenue Code. It has been submitted by Mr. Oza, learned advocate for the petitioner that the said order has been passed by the authority against the petitioner without hearing the petitioner. He has also pointed out that though the advocate for the petitioner has not received any communication from the authority in respect of date of hearing and the envelope has returned back to the authority, the order has been passed by the revisional authority against the petitioner without giving the petitioner an opportunity of being heard. According to him, therefore, the order impugned herein is against the principles of natural justice and the same is required to be quashed and set aside on that ground alone without entering into other aspects of the matter by remanding the matter back to the same authority for passing appropriate orders in accordance with law after hearing the petitioner.

On the other hand, learned AGP Mr. Pandya has submitted that the envelope has returned back because the advocate concerned was not residing in the village. He has further submitted that sufficient opportunity was given to the petitioner as well as his advocate but no one has remained present before the authority and, therefore, the authority was right in proceeding in absence of the petitioner and this court should not interfere with the said order impugned herein.

Considering the facts and circumstances of the present petition, no doubt, sufficient opportunities were given to the petitioner as well as his advocate and the matter before the authority was adjourned time and again. However, considering the fact that the communication which was sent to the advocate for the petitioner namely Mr. A.S. Raval has returned back without acknowledged by the learned advocate Mr. Raval because was not residing in the said village, it is clear that the said communication has not been served upon the learned

advocate for the petitioner and, therefore, it is clear that the order has been passed without there being any representation from the side of the petitioner. Considering this aspect of the matter, I am of the view that the petition is required to be allowed by quashing the said order on that ground alone without observing anything on merits of the matter so as to enable the petitioner to have his representation before the respondent authorities. Therefore, without observing anything on merits, the order dated 18th January, 1999 passed by the revisional authority is quashed and set aside and the matter is remanded back to the same authority for being decided in accordance with law after hearing the petitioner. The tribunal is directed to decide the said matter in accordance with law within two months from the date of receipt of certified copy of this order. Rule is made absolute in terms indicated hereinabove with no order as to costs.

20.9.2000. (H.K.Rathod,J.)

Vyas